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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 463

DANIEL REEVES, INC., PETITIONER,

vs.

CHARLES W. ANDERSON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE THIRD DISTRICT OF NEW YORK.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

ELKAN TURK,
HERMAN GOLDMAN,
Counsel for Petitioner.

(35,385)

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SUPREME COURT OF THE UNITED STATES.

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No. 463

DANIEL REEVES, INC. (PLAINTIFF-APPELLANT BELOW), PETITIONER,

vs.

CHARLES W. ANDERSON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE THIRD DISTRICT OF NEW YORK (DEFENDANT-APPELLEE BELOW), RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of DANIEL REEVES, INC., a corporation organized and existing under and by virtue of the laws

of the State of New York alleges and respectfully shows to this Honorable Court:

The proceeding which this petition seeks to review is the determination of the Circuit Court of Appeals for the Second Circuit, which affirmed the Judgment at law rendered by the District Court of the United States for the Southern District of New York, dismissing the complaint after a trial to the Court upon written stipulation waiving a jury, and upon facts stipulated by the parties. The District Court specially found the facts as stipulated and embodied its conclusions of law in a decision.

The petitioner was the plaintiff in the action and the appellant in the Circuit Court of Appeals, and will be hereinafter referred to as the plaintiff; and the respondent will be referred to as the defendant.

The action involves the interpretation to be given Sections 607 and 611 of the Revenue Act of 1928, and, if the interpretation of the defendant be accepted, the constitutionality of those sections under the Fifth Amendment of the Constitution of the United States.

The plaintiff filed its income and profits tax return for the year 1919 on March 11, 1920, and during the year paid the taxes due according to the report. In March, 1924, the Commissioner of Internal Revenue assessed a deficiency against the plaintiff, and on April 5, 1924 the Collector of Internal Revenue made a demand for the amount of this deficiency. The plaintiff filed a claim for the abatement of the tax on April 16, 1924. On September 28, 1925, the Commissioner of Internal Revenue rejected the claim for abatement. On November 14, 1925 (more than five years after the

filing of the return), the plaintiff paid the amount of the deficiency with interest under threat of distraint and in fear of such threat and of the penalties prescribed by the Statute.

Thereafter, the plaintiff filed a claim for refund on the ground that the collection from the plaintiff of the amount of this deficiency was an illegal exaction by the Collector inasmuch as the period of limitations for the collection had expired. This claim for refund was rejected, and the action was seasonably brought in 1927 against the Collector for the recovery of the amount so exacted.

The Revenue Act of 1918 under which the tax was levied provided in part as follows:

> "SEC. 250. * * * (*d*) Except in the case of false or fraudulent returns with intent to evade the tax, the amount of tax due under any return shall be determined and assessed by the Commissioner within five years after the return was due or was made, and no suit or proceeding for the collection of any tax shall be begun after the expiration of five years after the date when the return was due or was made. In the case of such false or fraudulent returns, the amount of tax due may be determined at any time after the return is filed, and the tax may be collected at any time after it becomes due." 40 Stat. 1083.

Under the decision of this Court, in *Bowers v. N. Y. & Albany Lighterage Co.*, 273 U. S. 346, and, indeed, under the decision of the Circuit Court of Appeals for

the Second Circuit, in *Ellay Co. v. Bowers,* 25 Fed. (2) 637, the collection was illegal and the plaintiff, when the action was brought, had a good and sufficient cause of action for its recovery, and the District Court so found.

After the commencement of this action, and no doubt, to meet some of the results of the decision of this Court in the N. Y. & Albany Lighterage Co. case, the Congress incorporated into the Revenue Act of 1928, Section 612 which repealed Section 1106*a* of the Revenue Act of 1926, and Sections 607 and 611, which provided as follows:

> "SEC. 607. Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid (whether before or after the enactment of this Act) after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim." 45 Stat. 874, 26 U. S. C., Sec. 2607 (26 U. S. C. A., Sec. 2607).
>
> "SEC. 611. If any internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) was, within the period of limitation properly applicable thereto, assessed prior to June 2, 1924, and if a claim in abatement was filed, with or without bond, and if the collection of any part thereof was stayed, then the payment of such part (made before or within one year after the enactment of this Act) shall not be considered as an overpayment under the provisions of section 607, relating to payments made after the expiration of the

period of limitation on assessment and collection." 45 Stat. 875, 26 U. S. C. 2611 (26 U. S. C. A., Sec. 2611).

The Court below found that the Sections of 1928 Revenue Act above quoted should be so construed as to deprive a taxpayer, situated as is the plaintiff here, of the right to recover the amount thus illegally collected. The Court also found that given such interpretation, the statute none the less did not deprive the plaintiff of its property without due process of law in contravention of the Fifth Amendment of the Constitution of the United States.

The questions which your petitioner therefore desires this Court to settle are:

> Do sections 607 and 611 of the Revenue Act of 1928 constitute a mere limitation upon the right of the Commissioner of Internal Revenue, to make refund or give credit in respect of collections made after the expiration of the statutory period, or do they as well bar a recovery in a proper Court of Law by a taxpayer against a Collector who had exacted collection of the tax after the expiration of the statutory period.

and

> If a statute enacted by the Congress imposing a tax contains a provision to the effect that the tax shall not be collected after the expiration of a stated period and the collection is exacted after the statutory period has expired, may the Congress without violation of the Fifth Amendment of the Constitution of the United States enact a statute depriving the taxpayer of the right to recover the amount so collected.

These questions are of extreme importance to the public interest from many aspects. From the fiscal standpoint the Government has always argued that hundreds of millions of dollars which have been collected from taxpayers under similar circumstances, are to be retained by the Government or repaid to the taxpayers according to the decision which is finally reached in such cases as these. From the commercial standpoint, this case would decide whether a business man may consider an outlawed tax as a liability which has been definitely eliminated and may make his commitments accordingly, or whether he must set up a perpetual reserve against the possibility that Congress might in the future validate an enforced collection.

Of even greater importance, however, is the constitutional principle involved. The doctrine apparently announced by the Circuit Court of Appeals seems to be that a citizen may be deprived of a cause of action by legislative fiat without violation of his constitutional rights, provided only that the deprivation seems to the Court fair and just in its results; and that the deprivation is fair and just in its results if the cause of action was based upon the expiration of a statutory period of limitations.

The United States Courts of inferior jurisdiction which have had these questions presented to them, have reached conflicting results. In commenting upon this conflict Judge Learned Hand, who wrote for the Circuit Court of Appeals in the case at bar, said:

> "In spite of the extraordinary differences in judicial opinion which the situation has evoked—differences which only the Supreme Court can

> eventually settle—the underlying facts are not complicated."

and again:

> "We have quite deliberately avoided the citation of those decisions which hitherto dealt with these questions. Those in the district court are so many and so conflicting that it would serve no purpose merely to enumerate them. In the Circuit Courts of Appeal at present the plaintiff would win in the Fifth (U. S. *v.* Burden, Smith & Co., 33 Fed. (2) 229, and lose in the Ninth (Huntley *v.* Gile & Jenks, 32 Fed. (2) 857; Goodcell *v.* Graham & Foster, 35 Fed. (2) 586). Apparently, he would also lose in the Court of Claims, though we have not been favored with the citation in an available form (Gotham Can Co. *v.* U. S.)."

Your petitioner urges that the two sections of the Revenue Act of 1928 above quoted, merely precluded the Commissioner of Internal Revenue from allowing a credit or making a refund of the amounts collected under the circumstances present in this case, but did not deprive a taxpayer of his common law right to sue the Collector for moneys illegally exacted; that if these sections do deprive the taxpayer of his common law right to such recovery then they are violative of the Fifth Amendment. The statute involved is not a mere statute of repose. The time limitation was incorporated in the same statute which created the statutory liability for the tax, and under principles long established by the decisions of this Court such statutory limitations are themselves conditions imposed

upon the statutory liability and the liability itself ceases with the expiration of the period. To fortify this position the accompanying brief is respectfully submitted herewith.

The Court has granted a writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit in the case of *Graham and Foster, copartners, against Goodcell,* former Collector (281 U. S. 708) (reported below, 35 Fed. (2d) 586). In the Graham and Foster case the interpretation of Sections 607 and 611 is also involved. From a reading of the report of the case in the Circuit Court of Appeals it is not certain, however, that all of the questions above outlined can be raised in this Court. Moreover, it does not seem likely that the Graham and Foster case would be held to involve the entire scope of Section 611 and Section 607. The opinion of the Circuit Court of Appeals in the Graham and Foster case concerns itself almost exclusively with the meaning of the word "stay" as used in Section 611, and the questions of interpretation and of constitutionality upon which the Court below in this action based its entire decision were not even discussed. More important, however, is the circumstance that in the Graham and Foster case the claim in abatement was rejected on December 27, 1922, which was within the five year period after the filing of the return. It would seem, therefore, that the Collector had an opportunity after the claim in abatement was rejected to make collection within the five year period. Such is not the situation in the case at bar, and it would seem to follow that even were the Graham and Foster case decided in favor of the taxpayer, it might not neces-

sarily govern the case at bar, and a great body of the cases to which Section 607 and Section 611 would apply.

It is, therefore, the desire of the petitioners that this case be brought before this Honorable Court by certiorari in the hope that it may be advanced so that it may be heard with the Graham and Foster case and the entire scope and validity of Section 607 and Section 611 passed upon.

WHEREFORE your petitioner respectfully prays that a writ of certiorari issue out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the Second Circuit commanding the said Court to certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the record of all proceedings in the said Circuit Court of Appeals in this case, and which was entitled in that Court DANIEL REEVES, INC., Plaintiff-Appellant, against CHARLES W. ANDERSON, individually and as Collector of Internal Revenue for the Third District of New York, Defendant-Appellee, to the end that said case may be reviewed and determined by this Court as provided by law, and that your petitioner may have such other and further relief and remedy in the premises as to the Court may seem just, and that said judgment of the Circuit Court of Appeals may be modified by this Honorable Court.

DANIEL REEVES, INC.,
Petitioner,

By ELKAN TURK,
HERMAN GOLDMAN,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 463

DANIEL REEVES, INC. (PLAINTIFF-APPELLANT BELOW), PETITIONER,

against

CHARLES W. ANDERSON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE THIRD DISTRICT OF NEW YORK (DEFENDANT-APPELLEE BELOW), RESPONDENT.

BRIEF IN SUPPORT OF PETITION OF DANIEL REEVES, INC., FOR WRIT OF CERTIORARI.

Statement.

The opinion of the Circuit Court of Appeals embodying the determination of which review is here sought, was announced on July 21st, 1930, and has not yet been published in the official reports. It appears, however, at page 8914 of the 1930 Federal Courts Volume of the Commerce Clearing House.

In the District Court the case was decided by the Judge on stipulated facts, and the decision of the Judge incorporated the opinion written by him when this action and other actions of a similar nature were before him on motions for judgment on the pleadings, and this opinion appears under the title of *Regla Coal Company v. Bowers,* 37 Fed. (2d) 273.

The petitioner respectfully requests the Court to take jurisdiction by certiorari pursuant to Section 240 (*a*) of the Judicial Code (28 U. S. C. A. 347*a*) for the reason that important questions of Federal statutory interpretation and of constitutionality are involved which affect the national revenues and which have been variously decided in the several Circuits and which only the decision of this Court can finally adjudicate.

Statement of the Case.

The facts were stipulated by the parties below. For the purpose of this statement the petitoner will be referred to as the plaintiff, and the respondent as the defendant.

On March 11th, 1920, the plaintiff filed with the Collector of Internal Revenue its income and profits tax report for the year ended December 31st, 1919 (R. 12), and between March 15th, 1920, and December 15th, 1920, the plaintiff paid to the Collector the entire amount shown due by its report, and the plaintiff believed in good faith that it was paying the amount of its entire tax liability (R. 12-13).

On April 5th, 1924, the plaintiff received notice that an additional assessment of $1,886.79 had been made

against it for the year 1919 (R. 13). On April 16th, 1924, the plaintiff filed a claim in abatement with respect to this additional assessment (R. 14). On September 28th, 1925, the Commissioner of Internal Revenue rejected the claim in abatement (R. 14).

On November 14th, 1925 (and more than five years after the filing of plaintiff's return) the defendant as Collector of Internal Revenue collected from the plaintiff the sum of $2,061.31, claimed to be the defendant's additional income and profits tax for the year 1919 (R. 13). This amount the plaintiff paid under duress (R. 13). After the filing of the claim in abatement and until the time of collection, neither the defendant or any other officer of the Government had taken any proceedings for the collection of this additional assessment (R. 14).

The defendant on April 27th, 1927, filed the statutory application for refund with the Commissioner of Internal Revenue, and this application for refund was denied on November 5th, 1927 (R. 13-14). This action was commenced seasonably thereafter for the recovery of the amount so collected upon the ground that it constituted illegal exaction.

The defendant relied upon the defense that by reason of the filing of the claim in abatement and the delay in the collection by the Commissioner, Sections 607 and 611 of the Revenue Act of 1928 deprived the defendant of the right to recover (R. 5 and 6).

The District Court in its decision specifically found that on November 14th, 1925, when the additional assessment was collected from the plaintiff, the defendant was prohibited by statute from collecting it, the

collection was illegal and the plaintiff had a good and sufficient cause of action for its recovery (R. 16), and further found that Sections 607 and 611 bar this recovery and thus operating as a bar are nonetheless constitutional (R. 16 and 17).

Specification of Errors.

The petitioner contends that the Court erred (*a*) in holding that the effect of Sections 607 and 611 is to bar actions at law for the recovery of taxes illegally collected as were those in the case at bar, and (*b*) in holding that those sections are constitutional if they have that effect.

Summary of Argument.

The petitioner contends that the plain language of these statutes does not affect actions at law against a Collector of Internal Revenue, but merely direct the Commissioner of Internal Revenue when he may and when he may not make refunds and give credits for amounts collected after the statutory period has expired. The policy of distinguishing between actions against the Collector and refunds and credits by the Commissioner, is carried forward from Sections 1106(*a*) of the Revenue Act of 1926, and this distinction was recognized by the Circuit Court of Appeals of the Second Circuit as applying to the 1926 Act. The distinction is one based upon practical considerations.

If the statutes, however, are intended to bar recovery on such cases as this, then they are unconstitutional. The limitation period is included in the

statute under which the tax is levied. Under the decisions of this Court where a statute creates a liability and at the same time imposes a limit of time for its enforcement, the limit of time is a condition of the liability, and upon the expiration of the time the liability is extinguished. The re-creation of a liability once extinct amounts to taking of property without due process of law.

The Statutes Involved.

In the foregoing petition we have quoted Section 250(*d*) of the Revenue Act of 1918 and Sections 607 and 611 of the Revenue Act of 1928. We do not believe that it will aid the Court to repeat the quotation here.

The remaining statute which is of leading importance is Section 1106(*a*) of the Revenue Act of 1926, which provided:

> "SEC. 1106(*a*). The bar of the statute of limitations against the United States in respect of any internal-revenue tax shall not only operate to bar the remedy but shall extinguish the liability; but no credit or refund in respect of such tax shall be allowed unless the taxpayer has overpaid the tax. The bar of the statute of limitations against the taxpayer in respect of any internal-revenue tax shall extinguish the liability; but no collection in respect of such tax shall be made unless the taxpayer has underpaid the tax."

Point I.

Sections 607 and 611 of the Revenue Act of 1928 do not constitute a bar to actions at law against the Collector.

It is to be noted that Section 1106(*a*) of the Revenue Act of 1926 (which was repealed by Section 612 of the Revenue Act of 1928) provided in substance that no refund or credit should be allowed on account of taxes paid after the statutory period had expired, unless they constitute overpayments. Nonetheless, the Circuit Court of Appeals for the Second Circuit held in the case of *Ellay Company v. Bowers*, 25 Fed. (2d) 637 (certiorari denied, 48 S. C. T. 601), that this prohibition against credit and refund applied to the Commissioner of Internal Revenue only and did not constitute a bar to actions against the Collector. In that case the Circuit Court of Appeals to which the certiorari is now requested held that the collection by the Collector after the statutory period had expired constituted an illegal collection, and that a common law action for recovery would lie. Judge Manton, speaking for the Court, said:

> "A collection, after the statute of limitations against the collection has run, constitutes an illegal payment within the purview of Section 3226 of the Revised Statutes (26 U. S. C. A. Section 156; Comp. St. Section 5949), and a taxpayer may recover upon the ground that the tax was barred by the statute. *Seaman v. Bowers, etc.*, 297 Fed. 371."

A like interpretation of Section 1106(*a*) was supported in

Thornhill Wagon Co. v. Noel, 17 Fed. (2d) 407;
Gove v. Nichols, 23 Fed. (2) 856.

The similarity in the language employed by the Congress in Section 1106(*a*) of the 1926 Act and Sections 607 and 611 of the 1928 Act, should be sufficient to argue for a similarity of interpretation. The Court below went so far as to state that this argument is plausible; that it seemed to find difficulty now in justifying an interpretation which would permit a recovery at law while denying a refund by the Commissioner.

We respectfully submit that there is no such difficulty; but that, on the other hand, cogent reasons existed for insisting upon a Court adjudication in these cases rather than a summary determination by the Commissioner.

Section 250(*d*) of the Revenue Act of 1918 which is the limitation statute here directly involved, provided for different rules where the return was filed in good faith from those where fraud is involved. The several statutes relating to taxation have made numerous provisions relative to waivers and extensions of periods of limitation. Many questions of fact and of law would thus be involved in every claim for refund. To determine whether such claim should be allowed, it would be necessary to decide whether or not there has been fraud and whether or not any waivers or extensions have been executed, and if so whether they are valid, and what their legal effect and interpretation may be. All of these are questions which the

Congress might with good reason have committed to the Courts of the United States rather than to such administrative officer as the Commissioner of Internal Revenue, in view of the vast sums which are stated to be involved in such cases. Thus the logic of the situation supports the plain language of the statutes themselves in calling for an interpretation such as petitioner contended for below.

Point II.

If the statutes constitute a bar to the plaintiff's recovery, then they are violative of the Fifth Amendment.

At the outset, we should state that we are not unmindful of such decisions as those of this Court in *Campbell v. Holt*, 115 U. S. 620, in which it has been held that no constitutional rights are violated by a statute which extends the statutory period of limitations against a common law liability, such as for money had and received or assumpsit. Such cases, we believe, go upon the proposition that such common law liability exists indefinitely and the statute of limitations merely affords an unconscionable defense.

Quite different, however, is the case where the liability is not common law in its origin, but rather is a creature of a statute, and the same statute prescribes the period within which the liability shall be enforced.

Purely statutory nature of the tax liability was thus stated by Mr. Justice Waite in *Merriweather v. Garrett*, 102 U. S. 472, 501:

> "The power of taxation is legislative, and cannot be exercised otherwise than under the authority of the legislature."

It would seem to need no argument that but for the Revenue Act of 1918 the plaintiff here would have been under no liability for the tax here in question. The Revenue Act of 1918 was specific in its prohibition against collection beyond the period of five years after the filing of the return. Under such circumstances, the liability itself was extinguished with the expiration of the five-year period.

As Mr. Justice Holmes stated in *Davis v. Mills*, 194 U. S. 451,

> "The common case is where the statute creates a new liability and in the same section or in the same act limits the time within which it can be enforced, whether using words of condition or not. *The Harrisburg*, 119 U. S. 199. But the fact that the limitation is contained in the same section or in the same statute is material only as bearing on construction. It is merely a ground for saying that the limitation goes to the right created and accompanies the obligation everywhere. The same conclusion would be reached if the limitation was in a different statute, provided it was directed to the newly created liability, so specifically as to warrant saying that it qualified the right."

We also refer the Court to

The Harrisburg, 119, U. S. 199;

Phillips Co. v. Grand Trunk Western Railway, 236 U. S. 662;

Finn v. U. S., 123 U. S. 227;
Morgans, etc., v. Cocke, 273 U. S. 656;
Danzer v. Gulf Railway Co., 268 U. S. 633;
Atlantic Coast Line R. R. v. Burnette, 239 U. S. 199.

This Court has held that to revive a statutory liability after the lapse of the period limited in the statute itself is to take property without due process of law. Thus in the case of *Danzer v. Gulf Railway Co.*, 268 U. S. 633, this Court had before it the provisions of the legislation relating to Government operation of the railroads during the War, and particularly the provisions which sought to re-create and extend the limitation periods under the various transportation acts which had already expired. The following is the language of this Court:

> "We need not reexamine the doctrine of *Campbell v. Holt*, 115 U. S. 620, as it is plain that case does not apply. That was an action on a contract for the recovery of money. By a state statute of limitations, the right of action had been barred. The statute was repealed before the action was commenced. It was held that the action could be maintained and that such repeal did not deprive the debtor of his property without due process of law in violation of the Fourteenth Amendment. The decision rests on the conception that the obligation of the debtor to pay was not destroyed by lapse of time and that the statute of limitations related to the remedy only and that the removal of the bar was not unconstitutional.

> The opinion distinguishes the case from suits to recover real and personal property. That case belonged to the class where statutory provisions fixing the time within which suits must be brought to enforce an existing cause of action, are held to apply to the remedy only. But such provisions sometimes constitute a part of the definition of a cause of action created by the same or another provision, and operate as a limitation upon liability. Such, for example, are statutory causes of action for death by wrongful act (numerous cases cited). This case belongs to the latter class. Section 206 (F) will not be construed retroactively to create liability. *To give it that effect would be to deprive defendant of its property without due process of law in contravention of the Fifth Amendment* (numerous cases cited)." (Italics ours.)

The position of the petitioner is that that rule in the Danzer case has full application to the limitations contained in the Revenue Act of 1918.

If such were not the effect of the several limitation statutes, then by operation of Section 1106(*a*) of the Revenue Act of 1926, certainly the liability had been extinguished, and under the reasoning in the Danzer case it was not competent for the Congress merely by repealing the section two years after its enactment, to re-create the liability.

The argument above presented in its barest outline was disapproved by the Court below upon the ground that it presupposed that the inhibitions of the Fifth Amendment constituted a "remorseless pattern which

all legislation must fit". The Court below proceeded in disposing of this argument to say:

> "But constitutional limitations are not indifferent to the occasions of the statutes they affect. They represent a mood rather than a command, that sense of moderation, of fair play, of mutual forbearance, without which states become the prey of faction. They are not the rules of a game; their meaning is lost when they are treated as though they were. It is quite true that the section took away a defense from the plaintiff; he is right to complain unless we can question the kind of defense it was. The moment we do, it must appear to any fair person that he ought to have it."

We submit that the view thus expressed with regard to the effect of constitutional limitations goes far beyond any view which has received the approval of this Court. We are not unmindful that with respect to the Fourteenth Amendment this Court has recognized that changing conditions require a more or less elastic view of the extent of the police powers reserved to the several states in the Constitution, and that due process of law under the Fourteenth Amendment must have a correlative elasticity. This view is set forth in *Euclid v. Ambler Realty Company*, 272 U. S. 365. Of course, similar reason does not exist with respect to the Fifth Amendment. But even the due process clause of the Fourteenth Amendment has never, so far as we can learn, been previously treated by any court as one which has or has not application to a particular statute according as the taking of property by the statute

may be judicially determined to be reasonable and fair or unreasonable and unfair.

Merely to indicate the conflict in judicial opinion upon this subject, we refer to the decision of the United States District Court, Western District of Arkansas, El Dorado Division, rendered on May 6th, 1930, in *Southern Lumber Company vs. United States of America,* which has not yet been officially reported, but which appears on page 8962 of the Federal Courts Volume of the Commerce Clearing House for 1930. Judge Miller, writing for the Court, said:

> "Not only had the remedial statute of limitations expired, but the very essence of the obligation was destroyed. The attempt of Section 612 of the Revenue Act of 1928 to revive claims already barred and extinguished would unconstitutionally deprive the taxpayer of property without due process of law. Congress has no power to re-create a liability once extinguished."

Nor can these statutes be sustained on the theory that they are mere ratifications of collections made in the name of the Government. This Court in *United States v. Heinszen,* 206 U. S. 370, and *Rafferty v. Smith, Bell & Company,* 257 U. S. 226, definitely settled the rule that in order to operate as a ratification, a statute must specifically express the intent to ratify and moreover that the legislature at the time of passing the ratifying act must have had the power to grant original authority to do the act. Here, no word even suggesting ratification appears in the statutes and by force of arguments above set forth, the Congress would have

been without authority after the expiration of the five year period, to authorize the collection at the time when the legislation was adopted.

Conclusion.

THE PETITIONER THEREFORE SUBMITS THAT THIS IS A PROPER CASE FOR THE ISSUE OF A WRIT OF CERTIORARI.

Respectfully submitted,

ELKAN TURK,
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